

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

EUGENE MILLER,

Plaintiff,

v.

// CIVIL ACTION NO. 1:06CV64
(Judge Keeley)

SHERIFF JIM JACK,

Defendant.

ORDER DENYING MOTION FOR EXTENSION
TO FILE NOTICE OF APPEAL

On July 12, 2007, the Court granted summary judgment in favor of the defendants and entered judgment against the plaintiff, Eugene Miller ("Miller"). On July 23, 2007, Miller filed a "Motion For Extension Of Time To File A Appeal Due To Medical DTS Treatments For Chronic Back Pain."

Federal Rule of Appellate Procedure 4(a)(1) mandates that a notice of appeal in a civil case be filed within thirty days from entry of judgment. Rule 4(a)(5)(A), however, permits a district court to extend the time to file a notice of appeal if a party (1) requests such an extension no later than 30 days after the time prescribed in Rule 4(a) expires and (2) demonstrates excusable neglect or good cause. Any extension provided by a district court "may not exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later." Fed.R.App.P. 4(a)(5)(C).

A motion under either Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, however, delays the onset of the time in which

ORDER DENYING AS PREMATURE MOTION FOR EXTENSION
TO FILE NOTICE OF APPEAL

to file a notice of appeal. Fed.R.App.P. 5(a)(4)(A)(iv). Specifically, the time in which to file a notice of appeal does not begin to run for any party until an order is entered disposing of the pending motion. Id.

On July 23, 2007, Miller filed a motion for reconsideration of the Court's Order granting summary judgment and dismissing with prejudice his complaint. Therefore, the time in which to file a notice of appeal has not yet begun to run in his case. The Court, therefore, **DENIES** Miller's motion for an extension of time (dkt no. 119) because it has been filed prematurely.

It is **SO ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and the pro se plaintiff by certified mail.

DATED: July 25, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE